



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0545; FRL-9937-27-Region 9]

**Disapproval of California Air Plan Revisions, South Coast Air
Quality Management District**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP) concerning Vehicle Scrapping, Employee Trip Reduction, and procedures for the hearing board concerning variances and subpoenas. We are proposing action on local rules that regulate these activities under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit comments, identified by docket number EPA-

R09-OAR-2015-0545, by one of the following methods:

1. *Federal eRulemaking Portal*: www.regulations.gov. Follow the on-line instructions.
2. *E-mail*: steckel.andrew@epa.gov.
3. *Mail or deliver*: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to

consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Pérez, EPA Region IX, (415) 972-3248, perez.idalia@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. The State's Submittal

A. *What rules did the State submit?*

Table 1 lists the rules proposed for disapproval with the date that they were adopted or amended and submitted by the California Air Resources Board (CARB).

Table 1 - Submitted Rules

Local Agency	Rule #	Rule Title	Adopted or Amended	Submitted
SCAQMD	1610	Old-Vehicle Scrapping	05/09/97	06/03/97
SCAQMD	2202	On-Road Motor Vehicle Mitigation Options	10/09/98	06/03/99
SCAQMD	503.1	Ex Parte Petitions for Variances	02/05/88	02/07/89

Local Agency	Rule #	Rule Title	Adopted or Amended	Submitted
SCAQMD	504	Rules from which Variances Are Not Allowed	01/05/90	05/13/91
SCAQMD	511.1	Subpoenas	02/05/88	02/07/89

On December 3, 1997, the submittal for SCAQMD Rule 1610 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On December 3, 1999, the submittal for SCAQMD Rule 2202 was deemed by operation of law to meet the completeness criteria. On May 5, 1989, the EPA determined that the submittal for SCAQMD Rules 503.1 and 511.1 met the completeness criteria. On July 10, 1991, the EPA determined that the submittal for SCAQMD Rule 504 met the completeness.

B. Are there other versions of these rules?

There are no previous versions of Rule 1610 in the SIP, although the SCAQMD adopted earlier versions of this rule on 02/11/94, 10/13/95, 02/08/96 and 04/11/97, and CARB submitted them to us on 07/13/94, 10/18/96, 10/18/96 and 06/03/97 respectively. There are no previous versions of Rule 2202 in

the SIP, although the SCAQMD adopted earlier versions of this rule on 12/08/95, 03/08/96 and 11/08/96, and CARB submitted them to us on 11/26/96, 11/26/96 and 12/19/97 respectively. There are no previous versions of Rules 503.1 and 511.1. There are no previous versions of Rule 504 in the SIP, although the SCAQMD adopted an earlier version of this rule on 02/05/88. While we can only act on the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rules?

Nitrogen oxides (NO_x) and volatile organic compounds (VOCs) help produce ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC and NO_x emissions. Rule 1610 is a voluntary rule with the goal of reducing motor vehicle exhaust emissions of VOC, NO_x, carbon monoxide (CO), and PM by issuing mobile source emission reduction credits (MSERCs) in exchange for the scrapping of old, high emitting vehicles. Rule 2202 requires employers with 250 or more full or part-time employees at a worksite to reduce mobile source emissions of VOC, NO_x and CO generated from employee commutes. The EPA's technical support documents (TSDs) have more information about rules 1610 and 2202.

Rules 503.1 describes procedures for how sources can apply for ex parte variances. Rule 504 specifies rules for which the SCAQMD hearing board will not grant variances. Rule 511.1 describes procedures for the hearing board regarding subpoenas.

II. EPA's Evaluation and Action

A. How is the EPA evaluating these rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). In addition, pursuant to CAA section 110(i), neither EPA nor a state may revise a SIP by issuing an "order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan" without a plan promulgation or revision.

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs and NO_x in ozone nonattainment areas classified as moderate or above (see CAA section 182(b)(2) and

182(f)). The SCAQMD regulates an ozone nonattainment area classified as extreme for the 1997 and 2008 8-hour ozone standards (40 CFR 51.305). In addition, SIP rules must implement Reasonably Available Control Measures (RACM) in moderate PM_{2.5} nonattainment areas (see CAA sections 172(c)(1) and 189(a)(1)(C)). The SCAQMD regulates a PM_{2.5} nonattainment area classified as moderate for the annual and 24-hour standards (40 CFR 51.312). A RACM evaluation is generally performed in context of a broader plan.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little

Bluebook).

4. "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," EPA from J. Craig Potter, Thomas L. Adams Jr., Francis S. Blake, September 23, 1987.
5. "Guidance an Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits" EPA from Kathie A. Stein, January 25, 1995.

B. Do the rules meet the evaluation criteria?

EPA supports SCAQMD efforts to implement nontraditional and innovative strategies for reducing air pollutant emissions, including commuter programs to reduce the frequency that employees drive alone to work, and programs to incentivize early adoption and turnover to cleaner, less-polluting mobile sources.¹ Nonetheless, we have identified several provisions in these rules that do not meet the evaluation criteria. These deficiencies are summarized below and discussed further in the TSDs. Because these deficiencies are significant enough to prevent our approval of these rules, we have not attempted to

¹See, e.g., U.S. EPA, Transportation and Climate Division, Office of Transportation and Air Quality, "Commuter Programs: Quantifying and Using Their Emission Benefits in SIPs and Conformity" (February 2014) and Memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, re: "Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs)" (October 1997).

identify all other potential approvability issues, and are not providing a detailed analysis of all the evaluation criteria listed above. While we cannot propose to approve SCAQMD Rules 1610 and 2202 at this time, we commend SCAQMD's leadership in developing and implementing creative programs like these for many years and we commit to continued collaboration to address SCAQMD's air quality challenges.

EPA and California have long recognized that a state-issued variance, though binding as a matter of state law, does not prevent EPA from enforcing the underlying SIP provisions unless and until EPA approves that variance as a SIP revision. The variance provisions in Rules 503.1 and 504 are deficient for various reasons, including their failure to address the fact that a state- or district-issued variance has no effect on enforcing the underlying federal requirement unless the variance is submitted to and approved by EPA as a SIP revision. Therefore, the inclusion of these rules in the SIP is inconsistent with the Act and may be confusing to regulated industry and the general public.

States and Districts can adopt various provisions describing local agency investigative or enforcement authority, including the authority to issue subpoenas such as in Rule

511.1, to demonstrate adequate enforcement authority under section 110(a)(2) of the Act. These rules should not be approved into the applicable SIP, however, to avoid potential conflict with EPA's independent authorities provided in CAA section 113, section 114 and elsewhere.

C. What are the identified rule deficiencies?

The deficiencies listed below are some of the provisions that of the submitted rules that do not satisfy the requirements of section 110 and part D of Title I of the Act and prevent full approval of the SIP submittals.

We propose to disapprove the SIP revision for Rule 1610 based at least in part on the following deficiencies:

1. The Section (e)(2) requirement that engines of scrapped vehicles be destroyed is insufficiently federally enforceable for various reasons.
2. The Section (f)(2)(A) requirement that the vehicle be registered for two years within SCAQMD is not fully enforceable by allowing the Executive Officer to approve different documentation.
3. The Section (g) requirement of a visual and functional inspection of the vehicle has no recordkeeping requirements.

4. There is no recordkeeping requirement to demonstrate compliance with the Section (g)(1) requirement that vehicles be driven under their own power to the scrapping site.
5. There is no requirement to maintain records for the life of the MSERCs.

We propose to disapprove the SIP revision for Rule 2202 based at least in part on the following deficiencies:

1. Per Section (f)(1), the rule relies on Regulation XVI, which is not currently in the SIP.
2. Per Section (f)(3), the rule relies on AQIP (Rule 2501), which is not currently in the SIP.
3. Per Section (f)(4), the rule relies on emission reduction strategies approved on a case-by-case basis by the Executive Officer.
4. Per Section (g)(4), the rule relies on vehicle miles travelled reduction programs approved on a case-by-case basis by the Executive Officer.

We propose to disapprove the SIP revision for Rules 503.1 and 504 because they conflict with CAA sections 110(a) and (i) and fail to address that a state- or district-issued variance has no effect on enforcing the underlying federal requirement

unless the variance is submitted to and approved by EPA as a SIP revision.

We propose to disapprove the SIP revision for Rule 511.1 to avoid potential conflict with EPA's independent authorities provided in CAA section 113, section 114 and elsewhere.

D. Proposed action and public comment

As authorized in section 110(k)(3) of the Act, we are proposing full disapproval of the submitted SCAQMD Rules 1610, 2202, 503.1, 504, and 511.1. There are no sanctions or Federal Implementation Plan (FIP) implications should EPA finalize this disapproval. Sanctions would not be imposed under CAA section 179(b) because the submittal of Rules 1610 and 2202 is discretionary (i.e., not required to be included in the SIP). A FIP would not be imposed under CAA section 110(c)(1) because the disapproval does not reveal a deficiency in the SIP that such a FIP must correct. Specifically: (1) Rule 1610 is voluntary and only serves to provide for an alternative method of compliance for stationary and other emission sources subject to other District regulations that allow the use of credits as a compliance option; and (2) Rule 2202 is not a required CAA submittal because the CAA gives state and local agencies discretion, but does not require, employers "to implement

programs to reduce work-related vehicle trips and miles travelled by employees" (see CAA section 182(d)(1)(B)). Additionally, at this time, we have not credited emission reductions from Rules 1610 or 2202 in an approved SIP and we are not aware of a SCAQMD plan submitted to EPA that relies on emission reductions from these rules to fulfill a CAA requirement. Accordingly, the failure of the SCAQMD to adopt revisions to Rules 1610 and 2202 would not adversely affect the SIP's compliance with the CAA's requirements, such as the requirements for section 182 ozone RACT, reasonable further progress, and attainment demonstrations. Rules 503.1, 504 and 511.1 regulate hearing board procedures and do not control emission sources or otherwise generate emission reductions nor are they required elements of the SIP. Thus, EPA does not need to impose sanctions or promulgate a FIP upon their disapproval. Note that the submitted rules have been adopted by the SCAQMD, and a final disapproval by the EPA would not prevent the local agency from enforcing them or the revised versions of these rules subsequently adopted by SCAQMD as a matter of State law.

We will accept comments from the public on the proposed disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small

business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This proposed rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on

issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538, for State, local, or tribal governments or the private sector. EPA has determined that the proposed disapproval action does not include a federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP rules EPA is proposing to disapprove would not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus,

Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d)

(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions to Address

Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and

activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: October 30, 2015. Jared Blumenfeld,
Regional Administrator,
Region IX.

[FR Doc. 2015-29802 Filed: 11/23/2015 8:45 am; Publication Date: 11/24/2015]